IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1159 OF 2006
IN
WRIT PETITON NO.4137 OF 2006

Dhananjay Prabhakar Avasarikar ..Applicant.

V/s.

Progressive Education Society ..Respondent.

Mr.A.V.Anturkar for applicant.

Mr.R.K.Saroj i/b. S.V.Pitre for respondent No.1.

Mr.Girish i/b. M.G.Kulkarni for respondent No.2.

CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.

DATED : 6TH OCTOBER, 2006.

P.C. :-

Heard Mr.Anturkar in support of the Civil Application. Mr.Saroj appears with Mr.Pitre for the respondent No.1 and Mr.Kulkarni for respondent No.2. The Civil application seeks a clarification of the order passed by the Division Bench to which one of us (H.L.Gokhale, J.) was a party. That order was passed on 12th March, 2001 in Writ Petition No.4137 of 2000.

2. The facts leading to this application are as follows:-

. Petitioner herein was selected for the post of Lecturer in the Management College run by respondent No.1 Educational Society. He joined on 5th August, 1997. His services came to be terminated on 31st January, 1999 since according to the Management, he did not have the requisite qualification. The qualification required were in two parts. It is the case of the applicant that he falls in the second part thereof which stipulates Masters Degree [MBA, MCM, MMS, M.COM.] with IInd class and Bachelor degree in second class as the requirement. The petitioner had obtained graduation in Commerce i.e. B.Com. as well as LL.B. and he also had post graduation decree in Master of Management Science (MMS). The petitioner did not have second class in his B.Com. examination but he had it in the LL.B. examination. The College Management took a view that LL.B. was not the degree of graduation contemplated in the later part of this qualification and that is why he was terminated.

3. When the aforesaid Writ Petition No.4137 of 2000 was filed, the Division Bench was told that the petitioner had a forum namely to approach the Grievance Committee under section 57 of the Maharashtra Universities Act, 1994 and that he should make a representation to them. In fact, he had filed a

representation on 20th January, 2000. The Division Bench, therefore, passed the following order:-

(a) The Grievance Committee of the University to decide the grievance of the petitioner expeditiously and preferably within six weeks from today.

(b) It is needless to say that in case the University decides in favour of the petitioner, then the petitioner shall be entitled to get the said post of Lecturer.

(c) However, it is made clear that in case it is decided against the petitioner, the petitioner may, if so advised, challenge the said order by taking necessary steps.

Thus, as per para (b), this Court held that if the University decides in favour of the petitioner, the petitioner will be entitled to get the said post of Lecturer.

4. It so happened that the Grievance Committee did decide in favour of the petitioner but the Management Council of the University decided against him. That made the petitioner file another Writ Petition bearing No.426 of 2002 which was heard and decided by another Division Bench by Judgment and order dated 3rd February, 2005. The petitioner had challenged his non-approval for the post by the respondent No.2 College Management. The University was

also a party to the petition. The Division Bench looked into the qualification required and accepted the submission of the petitioner and made the petition absolute in terms of prayer clause (a) & (b) of that Writ Petition. Prayer clause (a) of the petition was for quashing and setting aside the decision of the Management Council of the University and in prayer clause (b) he had sought a declaration that he was duly qualified for the post of the Lecturer.

5. This Judgment & order of the Division Bench was carried by the first respondent Management to the Supreme Court. The Supreme Court disposed of the petition for Special Leave to Appeal (Civil) No.8938 of 2005 by passing the following order:-

> We have heard learned counsel for the parties.
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> Having regard to the nature of the case, we are of the view that the first respondent would not be entitled to back wages, particularly, in view of the fact that he has already been serving in other institutions. To that extent, the impugned judgment is varied.
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> The special leave petition is disposed of accordingly.

6. It so happened that although this order was passed, the College Management did not give the petitioner the correct fitment and pay which according

to him, ought to have been given to him if he was to join back in the College. The College Management wrote to him by their letter dated 9/3/2006 that when he was terminated he had not completed three years to be confirmed and, therefore, he will have to join on the starting pay of Rs.8,000/-. The Petitioner's contention is that he was denied the back wages but otherwise, the order passed by the Division Bench in Writ Petition No.426 of 2000 was left un disturbed by the Supreme Court. That order read with the order passed in the earlier Writ Petition No.4137 of 2000 made it clear that the petitioner was entitled to the said post of Lecturer to which he was selected way back in the year 1997. He was wrongfully terminated in spite of having the qualification and, therefore, he filed the first Writ Petition No.4137 of 2000 where the High Court held that (a) Grievance Committee will decide his representation and (b) if University decides in his favour, he will be entitled to the said post. Unfortunately for him, though the Grievance Committee decided in his favour, the Management Council of University decided against him. He was, therefore, required to file the second Writ Petition No.426 of 2002 where the decision of the Management Council was set aside. The petitioner had obviously joined another college in the meanwhile and had been drawing better

salary. Therefore, the Supreme Court denied him backwages but that very order read with earlier order in Writ Petition No.4137 of 2000 implied that he was entitled to the said post with continuity and correct pay fixation. The College Management took a stand that if at all he was to join he will have to join from starting. The petitioner submitted that his termination was bad which was interfered. A declaration in that regard was made and only the backwages are denied, therefore, the petitioner was to be given correct pay and allowed to join on pay to which he would be entitled.

7. It is for this purpose the present Civil Application has been filed and a clarification is sought with respect to para (b) of the order passed by the Division Bench on 12th March, 2001. The College Management is contending that the Civil Application is not maintainable. Their submission is that the petition is already disposed of and, therefore, reliance is placed on paragraph 10 of the Judgment in the case of **State of Uttar Pradesh V/s. Brahm Datt Sharma & Anr.** reported in **(1987) 2 Supreme Court Cases, 179**. The Apex Court has held in that order that Misc. Application could not have been filed to revive a Writ Petition which has been disposed of earlier and

for that purpose, a separate Writ Petition would become necessary. It is seen from para 5 of the Judgment that what had happened is that the departmental inquiry against the respondent was quashed in an earlier writ petition on the ground that he was not afforded opportunity to show cause against the proposed punishment. In fact, while allowing the petition the High Court observed that it would be open to the Government to draw fresh proceedings. The proceedings or the charges were in fact not quashed, in the meanwhile, he had retired. Since the service of the respondent were not satisfactory he was given a notice to show cause as to why his gratuity and pension should not be forfeited. That was an independent cause yet on a Miscellaneous application, the same was interfered by High Court. In that context, the Apex Court held that a separate petition has to be filed. In the present case, the petitioner is not seeking to revive the Writ Petition. All that he is saying that the confusion, if at all on the part of the Management be removed by giving a clarification with respect to para (b) of the order which was passed which stated that in the event the University decides in favour of the petitioner, he will be entitled to the said post of Lecturer. This flows from the order passed earlier. It is not a fresh cause and, therefore, a Civil Application would be

maintainable.

8. In our view, the submission of Mr.Anturkar is well founded. This Court has already held that he is entitled to the said post. It follows that he is entitled to the correct fitment of pay if he is to join, but not entitled to the backwages in view of the order passed by the Supreme Court. This being the position, we allow this application and we order that para (b) of the order passed in Writ Petition No.4137 of 2000 includes therein the right to get correct fitment and continuity in service. As far as the fixation of the pay of a Lecturer is concerned, it is done by the Director of Technical Education. Therefore, the petitioner may make a representation to the Director of Technical Education who will decide the fixation of pay and correct fitment. We clarify that clause (b) of the order in Writ Petition No.4137 of 2000 includes therein the right to get correct fitment in the pay and continuity in service. Civil Application is allowed in these terms.

9. The first respondent applies for a stay of this order, which is rejected.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)